

The Scottish Courts of High Commission 1610-38

GEORGE I. R. McMAHON, B.A., M.A., B.LITT.

THE establishment of the two Courts of High Commission for the two provinces of St. Andrews and Glasgow in February 1610 was part of the reconstruction of the Scottish Church which James VI. had begun in the last decade of the sixteenth century and which he was by this date in a fair way to completing. The Courts were—as their counterparts in England—established by the King as an act of the royal prerogative in ecclesiastical matters. Prerogative powers over all estates, persons and causes whatsoever had been sweepingly asserted by Parliament in 1606,¹ but so late as 1610 the General Assembly went no further than the Confession of Faith of 1560 when it acknowledged the king as “the only lawful supream governour of this realme, as weill in things temporall as in conversatioun and purgatioun of the Religioun.”² Although there were certain similarities to be found between the English and Scottish Courts, and there is evidence that Richard Bancroft, Archbishop of Canterbury, had a part (perhaps a considerable part) in assisting James and the Scottish bishops in the reconstruction of the Scottish Church, the author of the event was certainly James himself. James had, in fact, since the early years of the last decade of the sixteenth century been engaged in a contest with the Melville presbyterian party for control of the Scottish Church, and with his success in establishing episcopal government he had broken the power of the Melville party.

The Melville party had triumphed briefly in 1592 when a presbyterian system was authorised by act of Parliament. But in the General Assemblies of 1597 and 1598 James secured the acceptance by the Church of the appointment of commissioners to advise with the King in matters of religion, and the reconstruction of the hierarchy had begun. It was a

¹ *A.P.S.*, iv, 281.

² *Book of the Universal Kirk*, ed. T. Thomson, iii, 1097.

reconstruction, for a vestigial episcopacy had never entirely been obliterated in the period 1560 to 1600; episcopacy continued to exist in superintendents and in bishops selected in accordance with the provisions of the Leith Convention of 1572. The exercise of ecclesiastical authority by such bishops ought to have come to an end with the authorisation of presbyteries in 1592, but the effect of Parliament's act was negligible. Two bishops sat as members of that same Parliament which adopted the provision; they continued to retain the emoluments of their offices, as did five other titular bishops.¹

By 1603 when James added the crown of England to his Scottish one following the death of Elizabeth—an event which considerably increased his prestige and authority in his native land—he was well on the way to securing a strong position of leadership in the affairs of both church and state, having succeeded in gathering about him an effective court party. The Earls of Montrose, Dunfermline and Dunbar and Thomas Hamilton had become his chief officers of state and had succeeded in establishing the authority of the Provy Council and largely curbing the feuding and lawless behaviour of the nobility and gentry. In the church James had gained a considerable “episcopal party”; among the most prominent were the commissioners (later bishops) George Gladstones, James Nicholson, David Lindsay and John Spottiswoode.

The General Assembly had been reluctant in 1600 to give its consent to the selection of commissioners by the King himself to sit in Parliament—the means James had intended to use to effect the restoration of the episcopate. The King then secured the consent of Parliament to the appointment by the sovereign to “bishoprics and other prelacies”; and in the autumn of 1600, after the selection of three commissioners to occupy the sees of Ross, Caithness and Aberdeen, James secured a ratification of his action by a Synodal Convention.² The General Assembly of 1602 was then prevailed upon to accept the *fait accompli* and agree to the filling of the remaining “vacant bishoprics”.

The accession of James to the English throne enabled the King to press his policy further and to attack individually the leaders of the presbyterian party. Six of Melville's associates were peremptorily dealt with, exiled from his majesty's dominions for their part in challenging the

¹ Peter Rollock, Bishop of Dunkeld, and Adam Bothwell, Bishop of Orkney, sat as members of the clerical estate in the Parliament of 1592. Others who held title to sees in 1592 were: David Cunningham, Aberdeen; Neil Campbell, Argyll; Alexander Campbell, Brechin; Andrew Graham, Dunblane; John Campbell, Isles.

² D. Calderwood, *History of the Kirk of Scotland*, 1842-9, vi, 95, 96.

King's authority over the Church by attempting to hold an Assembly at Aberdeen in 1605 after the King had postponed it. Andrew and James Melville and six others were then summoned to London, and there James attempted to overawe them and even possibly persuade them to accept the modified episcopacy which he was in the process of reconstructing in Scotland. A series of conferences were held at Hampton Court, Scottish bishops and commissioners and some of the English bishops joining in the consultations during the winter of 1606-1607; but the Melvilles and their associates were not to be converted. Andrew Melville was forced to leave the country; his nephew James was permitted to go only as far north as Berwick; the other ministers were allowed to return to Scotland.

The presbyterian leadership broken, James could proceed with completing the reconstruction of the Church. The remaining sees were filled; at the Convention of Linlithgow in 1606 it was agreed that the bishops would be "Constant Moderators" of the synods and of the presbyteries in which they resided; in the Parliament of 1609 the bishops were restored to their ancient jurisdiction in matrimonial, testamentary, and all spiritual causes. Culminating the process, the General Assembly of 1610 adopted ten articles the effect of which was completely to restore the episcopate.¹ The establishment by the King of the two Courts of High Commission earlier in the year had already provided the bishops with a means of coercion to establish their supremacy in the Church, though their authority in the Church courts of presbytery and synod had already considerably improved their position.

The genesis of the Scottish Courts of High Commission has never been very clear. What led the King to determine upon the establishment of such a body? His end was to strengthen the power of the bishops to be sure, but why should he adopt this means? Did the Scottish bishops suggest it? Or did it, as may be more likely, result from Bancroft's advice or from others of the English bishops advising the King? We can only conjecture since there seems to be no correspondence or documentary evidence relating directly to the matter. Inasmuch as there had never existed before in Scottish ecclesiastical history such a body as a High Commission Court, and since the Scottish bishops—especially those of Spottiswoode's circle—were reluctant to initiate innovations which might intensify the struggle with the presbyterian party, it does not seem to be very likely that the impetus for the courts came from Scotland. Bancroft had participated in the discussions James had on the reconstruction of the Scottish Church. Spottiswoode, Nicholson, Gladstones and David Lindsay had all been present in London and at Hampton Court, and

¹ *Book of the Universal Kirk*, ed. T. Thomson, III, 1095-1098.

Bancroft had taken a prominent part in the conversations and debate with the obdurate presbyterian ministers in 1606 and 1607.¹ But Bancroft clearly fitted himself in with James' comparatively cautious policy. We find none of that offensive, busy-body type of letter Archbishop Laud was wont to write to the Scottish bishops in Charles' reign, concerned with minutiae and often adopting a scolding and berating tone. Bancroft was significantly not one of those who participated in the consecration of the three Scottish bishops in the autumn of 1610. There were certain similarities of procedure between the English Courts of High Commission and those in Scotland which indicate the possibility of Bancroft's having a hand in the establishment of the Scottish Commission. The King's desire for at least some degree of uniformity in the government of the churches of both his realms may have disposed him to favour this instrument, which Bancroft had in England made into a fairly effective and dependable body. For Bancroft had found the English courts very useful in checking the challenge to the established church by the Puritans and the Roman Catholics—although granting that this was only a small part of the work of the English Courts, most of which was routine. The Scottish Courts could, however, be similarly employed to check the same kind of challenge to the King's ecclesiastical supremacy in Scotland.

The two Courts in 1610 were established by a commission from the King, issued under the Great Seal and promulgated by act of the Privy Council in February 1610.² The King gave as the reason for the establishment of the Courts the complaint "made to us . . . that the frequent advocations purchased by suche as were ather erroneus in religioun, or scandalous in life, not onlie discouraged the ministrie from censuring of vice, but emboldenned the offenders to continue in their wickednesse." The Courts were charged to "call before them at suche tymes and places as they sall thinke meete, anie person or persoues . . . being offenders ather in life or religioun." They were to

take tryell of all persons that have made defectioun, or otherwise are suspected in religioun . . . and als, whensoever they sall learne or understand of anie minister, preacher, or teacher of schooles,

¹ For Bancroft's connection with the Scottish Church before 1600, when he was bishop of London, see Cald. V, 118-123, and G. Donaldson, "The Attitude of Whitgift and Bancroft to the Scottish Church," *Trans. Royal Hist. Soc.*, 4th Ser. XXIV. R. Baillie referred to Bancroft as the "chief architect of the persecution of the ministers," *Historical Vindication of the Church of Scotland*, 55-57.

² Cald. VII, 57-62. *Register of the Privy Council*, VII, 417-420. Calderwood states that the commissions of 1610, 1615, and 1619 were all issued under the great seal. None of these, however, are to be found in the register of the Great Seal, although those of 1626 and 1634 are there recorded.

colledges, or universiteis . . . whose speeches in publict have benee impertinent and against the established order of the kirk . . .

The Courts could enforce their decisions by excommunication, and in cases of ministers they could censure, suspend, deprive or ward. The Courts could fine, imprison or ward at their discretion. These were the most important of the powers granted in the first commission; there would be extensions to the Courts' powers in later commissions. In 1611, the King ordered that the place of meeting of the Court for the province of St. Andrews should be transferred from St. Andrews to Edinburgh for convenience, but some sessions were also held at St. Andrews in succeeding years.

In 1615 the two Courts were combined, a new commission, again under the great seal, being issued, reducing to approximately half the number of members. The chief reason for the change was that delays had arisen because of the frequent absence of the Archbishops, when the terms of the 1610 commission had required that an Archbishop be one of the members present at any meeting of the Courts. The 1615 commission granted the Court much the same powers, but added, among those to be proceeded against, "offenders in life or religion, whom they find anie ways to be scandalous; and speciallie, resettlers and intercommoners with Jesuits, Seminarie and Masse preests, or excommunicated Papists, sayers and hearers of masse, recusants and not-communicants . . ." ¹ Following the adoption at Perth in 1618 of the five liturgical articles (the observance of Christmas, Good Friday, Easter, Ascension Day, and Trinity Sunday, private communion and private baptism, confirmation by the bishop, and kneeling at communion), the Court's commission was renewed (1619), with the power to

summe and call before them all ministers, . . . masters of schooles, colledges . . . for preaching and speaking in publict against the present established order of the kirk or estate, or against anie of the conclusions of the bypast Generall Assemblies . . . speciallie of the . . . Assemblie holden at Perth . . . and all disobeyers of the said acts. Likewise, writers of pamphlets . . . or of anie other books without His Majestie's licence . . .

Further, it was noted that there had been complaints that "advocations and suspensions are frequentlie granted by the Lords of Counsel and Session" on appeal from the High Commission, and the King sought to add to the Court's power to circumvent this diminution of its authority.²

¹ Cald. VII, 204-210; *R.P.C.*, X, 435-437n.

² Cald. VII, 384-388; *R.P.C.*, X, 605n.

In 1626, the year following his accession, Charles renewed the High Commission Court under the Great Seal with powers similar to the Court of 1619, probably the one significant addition being the specific provision to hear appeals from inferior church courts.¹ Not so much is known of the Court in the period after 1625, for David Calderwood, the historian and author of many tracts critical of the episcopal establishment, did not extend his *History* beyond the beginning of Charles' reign. Archbishop Laud's interest in Scottish affairs was principally with such matters as the Chapel Royal, the selection of bishops, and the introduction of the Canons of 1636 and the Service Book of 1637. There was, however, a fifth and final commission issued in 1634, coming in the year following Charles' visit to Scotland. In this commission Charles added specific provisions citing as those to be proceeded against "writers of lybells and pamphlets against any of the constitutions of the Church . . .", granting to the Court power to command the guard, the provost, and bailies in the "Burrowes", the constables and keepers of prisons, and a significant provision "inhibiting the Lords of the Secret Counsell and Session to grant no advocacion from the saids commissioners . . ."²

It is clear that the Courts were intended to be an effective arm of the hierarchy, and to a lesser extent of the officers of state—to the extent that they participated in its proceedings (and some like Melrose did take an active part) and to the extent that the peace and order of the Kirk was understood to be necessary to the peace and order of the state. The bishops were always the most prominent figures on the Courts. Five members could constitute a quorum under the provisions of the first three commissions; Charles considerably enlarged the Court, and stipulated the quorum as seven—but again providing that one of the archbishops always had necessarily to be present. In most of the sessions at least two or three bishops were present; but lay members also attended, as did many ministers.³ The balance of members in 1619 is not untypical of James' reign; of the total of fifty-six appointed, twelve were bishops, fifteen were nobles and lairds, twenty-five were ministers, and four commissaries. Charles' last court numbered one hundred and fifty-three (sixty three of them nobles and lairds and sixty-one ministers).

¹ *Registrum Magni Sigilli Regum Scotorum*, 1620-33, No. 1007; *Nat. Lib. Scot.*, Wodrow MS., XLIII, 121.

² *R.M.S.*, 1634-51, No. 228; Wodrow MS., LXXVII, 16.

³ The above remarks refer to those sessions of which there is evidence; notices of such sessions (and those attending) can be found in Calderwood, in the Register of the Privy Council and in other contemporary sources. No detailed records of the Courts' work remains; presumably the official records were destroyed. There are what appear to be original summons papers among the Wodrow MS.

After the Courts of High Commission were established they certainly adopted a method and procedure which was peculiarly Scottish. But it is interesting to compare the wording of the powers granted to the first Courts in Scotland with the wording of Elizabeth's Letters Patent in 1559. The English Courts were "to visit, reform, redress, order, correct, and amend, in all places within this our realm of England, all such errors, heresies, crimes, abuses, offences, contempts, and enormities, spiritual and ecclesiastical, whatsoever . . ." ¹ Elizabeth's Court was in fact a re-establishment of the more informal Court first erected in 1535 by a commission granted by Henry VIII. to Thomas Cromwell with unlimited powers to assist in enforcing the establishment of the King's supremacy. A number of smaller commissions were erected by Cromwell; Letters Patent establishing similar courts were issued in the reigns of Edward VI. and Mary; and Parliament in 1559 authorized the issuing of further Letters Patent. Under this Parliamentary statute Elizabeth established a more permanent Court, and further Letters Patent were issued, the last in 1601. James reissued the Letters of 1601 in 1605, and in 1611 and 1625 the Courts' powers were further broadened.

The chief purpose of the Court under Elizabeth was to examine heretics and other "contemners of religion"—those who could be charged with subverting the established religion and were considered a danger to the state. The Courts did indeed examine, fine, and imprison many charged with being papists or non-conformists. The Court of Elizabeth's reign also, however, became a recognised law-court in which its presiding members were often common-law justices, though in the seventeenth century the judges came to be the chief critics of the High Commission. It had jurisdiction, however, over a great variety of cases and became an appeal court from diocesan courts. In fact, the greatest part of its work was in hearing cases brought to it—by one party against another—on matters of divorce, desertion, alimony, morality, simony, plurality, drunkenness. ² After 1611 eighty per cent of its cases were of this nature. While the Court was severely criticized during James' and Charles' reigns, it became a popular court in the sense that a great number of cases, if they could be considered in any way ecclesiastical, were brought to it in preference to common law courts since the High Commission was often considered more efficient, giving more prompt decisions.

Similarly, the Scottish Courts considered a great number of cases, many of which were proceedings against recalcitrant ministers or "intercommuners with papists", but many others of a minor disciplinary nature which

¹ R. G. Usher, *The Rise and Fall of the High Commission*, 1913, 27, 28.

² *Ibid.*, Chap. XII.

seemingly might have been considered in lower church courts. The most prominent cases were—as in England in this same period—those which dealt with ministers who would not conform to the episcopal settlement nor with the requirement to observe the ceremonial articles enacted at Perth. The best know of these cases are those cited by David Calderwood, coming before the Court in the period 1610 to 1625. Some of these and a few others appear in the *History* of John Row, minister of Carnock, in the *Annals* of Sir James Balfour, Lyon King-at-Arms, and in the Wodrow MSS. in the National Library.

Forty-eight ministers, noted by Calderwood, were proceeded against by the Courts in this period 1610 to 1625 for non-conformity, and at the close of James' reign the chief opponents of the liturgical articles of 1618 had at least been intimidated and silenced. Of the forty-eight, the majority (twenty-seven), after being cited to appear, were then excused, either because of illness or if interceded for and excuse made by some prominent patron, or were admonished and allowed to continue in their ministry.¹

Another twenty-one were treated with greater severity. Two were confined to their own parishes, but allowed to continue in their ministry—John Row, the historian, and David Mearnes of Carnbee. Five were suspended from their ministry and confined, and then later restored—William Erskine, restored to his own parish of Dunino, the others transferred to other charges, David Barclay, suspended from Kilwinning and restored to Dairsie, Henry Blyth, suspended from Canongate Parish and restored to Eccles, David Forrester, suspended from Leith and restored to Rathven, and James Porteous, suspended from Lasswade and probably restored to Melville.²

Seven others were deprived—Thomas Hogg of Dysart, William Cranston of Kettle, David Dickson of Irvine (later a Moderator of the General Assembly), John Ferguson of Ochiltree, William Livingstone of Lanark, Archibald Simson of Dalkeith and Richard Dickson of St.

¹ John Malcolm, Perth; William Smith, Cupar; John Carmichael, Kilconquhar; John Weyms, Kinnaird; John Gillespie, Kirkcaldy; James Home, Dunbar; George Grier, Haddington; John Chalmers, Auchterderran; James Wilson, Kinglassie; William Murray, Crail; James Bennet, Auchtermuchty; John Murray, Strathmiglo; David Howie, Colvend; Samuel Sinclair, Langton; Alexander Kinneir, Whitsome; Alexander Smith, Chirnside; William Methven, Fogo; Alexander Home, Eccles; James Daisie, Earlston; James Burnet, Lauder; Francis Collasse, Channelkirk; John Clapperton, Ednam; William Arthur, Edinburgh West; Thomas Abernethie, Eckford; John Smith, Maxton; Robert Scott, Glasgow; James Inglis, Dailly (Cald. VII, 201, 392, 411, 413, 425, 427, 507, 532, 553).

² J. Row, Carnock, Cald. VII, 519, 539, and Row, *History*, 325, 326; David Mearnes, Cald. VII, 442; William Erskine, *Ibid.*, 413, 442; David Barclay, *Ibid.*, 442; Blyth, *Ibid.*, 388; Forrester, *Ibid.*, 388; Porteous, *Ibid.*, 424.

Cuthbert's, Edinburgh. All but one of them were warded in places other than their former charges and then later restored—the exception being Richard Dickson who was moved to Kinneil, a successor having been appointed to his charge.¹ Another seven were subjected to even harsher treatment, being deprived of their ministry “simpliciter”, the sentence never being recalled. Of these, Calderwood, minister of Crailing, was the most noted, being forced to leave Scotland, from whence he went to Holland. He was, however, later allowed to return, but only resumed his ministry after the fall of the bishops in 1638. George Dunbar of Ayr was forced to go to Ireland, and also resumed his ministry after 1638; Andrew Duncan of Crail, exiled to Berwick-on-Tweed, died in 1626, not having been permitted to resume his ministry. Of the other four, George Johnson of Ancrum, John Murray of Dunfermline, and John Scrimgeour of Kinghorn all died while in ward removed from their charges; Peter Hewat of Edinburgh continued warded probably until 1638 and then had reached too advanced an age to assume a new charge.² The majority of those proceeded against were, it might be noted, from Fife, Lothian and Merse, and the south-west. The ministers north of the Tay (and in the early seventeenth century probably half the population lived north of the Tay) in general seemed ready to conform.

During the thirteen years of episcopacy in the reign of Charles I, six cases involving Andrew Blackhall of Aberlady, Joseph Laurie of Stirling, William Livingstone of Lanark and David Dickson of Irvine (these latter two before the Court a second time), Walter Greig of Balermine, and Samuel Rutherford of Anworth—the later principal of St. Mary's College, St. Andrews—reflect much the same pattern of charges and sentences pronounced. Blackhall was ordered to be cited for questioning the King's supremacy over the Church; Greig for non-conformity and non-collation; Rutherford, first summoned in 1630, the charge being allowed to lapse, was cited in 1636 by Bishop Sydserf of Galloway chiefly because of his treatise published that year against Arminianism; and Livingstone and Dickson—deprived and then restored in James' reign—were now charged with permitting deprived ministers to officiate in their churches.³ Of Blackhall no further information seems available, and little regarding Laurie who was charged before the Court for refusing to remove from Stirling and ordered to be warded to Glasgow. Livingston and Dickson

¹ Cald., VII, 257-261, 352-355, 365-377, 427, 433, 435, 443, 530-542.

² Cald., VII, 259-271, 411-424, 443, 517-520, 532, 537, 543, 549-552.

³ Blackhall, *Royal Letters*, 1615-1635, I, 229; Laurie, R.P.C., 2nd Series, IV, 111, and Mar and Kellie MS, p. 17, Register House; Livingston, Row, *History*, 390; Dickson, *Fasti Eccl. Scot.*, III, 98; Grieg, Row, 391; Rutherford, Row, 396-397, and Baillie, *Letters and Journals*, I, 8.

were admonished but no further action was taken; Greig was suspended; Rutherford was suspended and warded to Aberdeen. None were deprived.

Others besides ministers were cited by the Court for non-conformity. Thomas Biggar, not a minister but a reader in Kinghorn, was so charged in 1621 and warded in the Tolbooth of St. Andrews; a brother of Samuel Rutherford, reader in Kirkcudbright, was charged not to come within ten miles of his parish; and Gordon of Earlston was cited to appear before the High Commission in July, 1635, for having held out of his kirk a new minister appointed by the bishop.¹ Lord Lorne defended Gordon and the matter was deferred. Robert Baillie, in his *Letters and Journals*, relates this last case to other proceedings of the Bishop of Galloway at this same time; in addition to the trial of Earlston, some gentlemen were reported fined by the Bishop, and the magistrates of Kirkcudbright confined to Wigtown for a time for non-conformity.²

The approximately sixty cases here noted were primarily of ecclesiastical discipline involving those who were questioning the authority of the King over the Church or refusing to obey the Articles of Perth. A second category involving considerable numbers were the Roman Catholics, usually styled "papists". In James' reign the case which attained the greatest notoriety was that of the first Marquis of Huntly, the feudal chieftian of the north-east. Huntly had already been under sentence of the Privy Council and had spent a number of years in exile and in confinement when he was called before the Court of High Commission in 1616 and warded in Edinburgh castle. After a few days he was given his freedom by Chancellor Dunfermline who, while conforming to James' establishment, remained a suspected private adherent to Roman Catholicism. The intervention of the Chancellor irritated the Church, as did other instances of High Commission decrees voided by the Council and Session which served to raise doubts as to the ability of the Court to make effective its decisions.³

Other cases involving Roman Catholics included the action taken against the Earl of Errol who was warded in St. Andrews in 1614, another action against the first Earl of Home, fined one thousand pounds and confined to his home in 1615, and actions against Gordon of Gight in 1616 and others of the Gordons who refused to comply with the Commission's

¹ Biggar, *Cald.*, VII, 514; Rutherford, *Row*, 406-407; Gordon, *Ibid.*, 389.

² Baillie, I, 16.

³ Spottiswoode, *History of the Church of Scotland*, 1851, III, 230-232; *R.P.C.*, X, 562n.

command to appear before it. The Privy Council in this latter instance issued an order to compel the Gordons to appear.¹

James had specifically included the prosecution of papists among the Court's powers in the commissions of 1615 and 1619. In 1629 the High Commission was specifically ordered to repress popery and particularly "receptors of Jesuits and Preistes". In 1622 James wrote to the Privy Council urging that further measures should be taken to arrest the spread of Roman Catholicism—after having written to the same effect to the two archbishops.² Charles wrote to the Council in 1627 ordering it to assist the Commission in its work of suppressing "poperie", for new complaints had been made to him of "a great encrease of Papists of late, and the insolencie of ther cariage, tending to a publict scandell . . ." Charles also wrote a separate letter to the High Commission, and probably additional communication was made to the bishops separately; in the Guthrie MS. at Guthrie Castle is a letter from Charles directing the Bishop of Moray to act against persons "within your diocy popishlie disposed . . ."³ Alexander Gordon was charged before the Court in 1630, and Robert Rhind of Strathbogie in 1634, the latter for "resetting priests".⁴ The High Commission Court was however, not the only body with authority to procede against "papists". The Privy Council appears to have acted in many more instances than the High Commission, and was more able to enforce its decisions. The Council, in 1629, established a committee for the particular purpose of "The Suppression of Papists"—a committee composed of six officers of state and nobles, six bishops, and seven ministers.⁵

These two categories—proceedings against the presbyterian opposition and against Roman Catholics—do seem to constitute the majority of cases dealt with by the Courts. Nevertheless, like the English courts, the Scottish High Commission had been given extensive jurisdiction over (and did consider) a wide variety of matters relating to ecclesiastical affairs—over what might be called "moral offences" and other matters having anything to do with the Scottish Church. The cases considered by the Courts were variously brought before it by individuals, referred to it by the Privy Council or by other Church courts, and on other occasions

¹ Errol, *R.P.C.*, X, 272, 279; Home, *Original Letters Relating to Ecclesiastical Affairs*, 1851, 428-431, and Wodrow MS, LXIX, 30; Gordons, *R.P.C.*, X, 555, 575-577.

² *Orig. Lett.*, 636-637, 686-687.

³ *Royal Lett.*, I, 125-127; Letter, 3rd July 1625, Guthrie MS, Box No. IV.

⁴ *R.P.C.*, 2nd Series, III, 566, and V, 592-3.

⁵ *Ibid.*, III, 185, 233.

proceedings were initiated by the Court itself, as in most of the instances involving the non-conforming ministers.

Most cases involving adultery, fornication, slander, behaviour in churches, and divorce were considered in kirk sessions, presbyteries, and diocesan synods. A few of these, however, were taken to the High Commission, often when violence was a factor; and for the same reason such cases might be heard before the Privy Council. It is also probably true that some cases may have been appealed to the High Commission when satisfaction could not be obtained in lower courts. The High Commission on the 19th of February, 1622, ordered the Session of Edinburgh to proceed with a trial for adultery referred to the Court.¹ Similar cases (of adultery) from the Synods of Fife and Elgin were referred to it.² One George Arnot was cited for trial before the High Commission for slander and fornication.³ Another case of slander was brought before the Commission against the bailies of Kirkcaldy in 1634, the Privy Council intervening to order the bailies to obey the order of the High Commission; on another occasion, however, in 1635, the Privy Council refused to permit an appeal (made on the ground that a case of slander was an ecclesiastical matter) to go to the High Commission and allowed the law court's decision to stand.⁴ Cases involving marriage and divorce were properly considered in the bishop's commissary courts, though they might also come before kirk session and presbytery; some may have found their way to the High Commission on appeal, but no record of such a case seems to be extant. The same thing appears to have been true of witchcraft—such cases generally coming before presbyteries, but often appealed to the Privy Council, which on some occasions refused to allow the church courts to proceed.

Occasional cases of disorder in churches were brought before the Commission. A disturbance in the kirk of Natoun in which damage had been done to an aisle in the building was brought before the Court in 1627; the minister of Dunscore, in 1631, was successful in getting the Court to proceed against one Herbert Hannay who created a disturbance at a baptism; and in 1635 the Court considered a complaint against Malcolm Crawford of Cartsburn for breaking into a church to bury his mother.⁵ Another case came before the Court involving assault on a minister in

¹ *R.P.C.*, XII, 651-652.

² Synod of Fife MS, 56, 145, 174, Reg. House (cited W. R. Foster, thesis Edin. Univ., "Ecclesiastical Administration in Scotland, 1600-1638"); Elgin Kirk Session, *Spalding Club Miscellany*, II, 179.

³ *R.P.C.*, X, 839.

⁴ *R.P.C.*, 2nd Series, V, 349, 491-492.

⁵ *R.P.C.*, 2nd Series, II, 433; *Ibid.*, 2nd Series, IV, 311-312; *Ibid.*, V, 658.

Perth; Richard Merchiston, a minister in Caithness, appeared before the High Commission in 1630 to appeal to the Court to assist him to recover damages for injuries received from his parishioners; a minister of the Synod of Fife, however, was charged before the Court in 1632—apparently because of drunkenness.¹ Still another case involved a dispute in which Crichton of Fren draught accused the Bishop of the Isles of assaulting him in a church.²

Again, because of the comparatively small amount of information about the Courts' activities little can be deduced about the involvement of the Courts in disputes concerning church lands, a particularly controversial subject during the whole of this period. There is only one such illustration and that in 1613 in which Lord Elphinston and the Bishop of Aberdeen were involved in a dispute before the High Commission concerning tacks of tiends of church lands in the Diocese of Aberdeen.³

There are only a few instances exemplifying the Courts' relations to lower ecclesiastical courts in routine matters of church discipline. The Commission reorganised the Kirk Session of Leith in 1630; and the Courts no doubt exercised considerable supervisory powers, as this instance at Leith indicates. In 1620 John Guthry (later Bishop of Moray) was cited by the Commission for not taking up his charge as ordered by the King in the high Kirk of Edinburgh, continuing instead to remain at his previous charge at Perth.⁴

Only in the years 1610, 1617, and 1618 were General Assemblies held during the life of the Courts, so there was little opportunity for the Church in Assembly to give much indication of its attitude towards the Courts. In 1616, however, the General Assembly adopted an act to the effect that "abuses of pilgrimages to wells, trees, and auld chappells" and "putting up of banefyres" should be "callit before the Hie Commissioun". The same Assembly also resolved that "those who do not present their children for instruction (catechising) to be callit before the High Commission."⁵ In 1622 the Court of High Commission sent out a letter to the ministers of all the Scottish dioceses requesting that each presbytery should appoint "two or three gentilmen" to make a collection for the sister reformed church in France.⁶

¹ Perth Pres., 20th June, 12th Sept. 1630, Reg. House, (cited Foster, p. 83); *R.P.C.*, 2nd Series, III, 616; Fife Synod 331 (cited Foster, p. 83).

² *R.P.C.*, 2nd Series, IV, 89-90.

³ *Orig. Lett.*, 309-310.

⁴ *Extracts the Records of the Burgh of Edinburgh, 1626-1641*, 68-70; *Spottiswoode Society Miscellany*, II, 291-295.

⁵ *B. U. K.*, III, 1120, 1127.

⁶ *Records of the Session, Presbytery, and Synod of Aberdeen*, Spalding Club, 99-101.

From the accounts given by David Calderwood of the proceedings in such trials or examinations as his own, that of Archibald Simson, William Livingston, and others, the procedure appears to have been fairly informal. The summons (including the charge) was read, the defendant was probably asked to take an oath that he would answer truly to questions demanded of him, and the Commission then invited the person charged to answer whether or not he was guilty of the charge and to make any explanations or replies he cared to the charge. The commissioners permitted the defendants to make long and extended replies and explanations of their positions. An interesting colloquy between Spottiswoode and John Scrimgeour of Kinghorn in 1620 is a good example of the exchange of defendant and accuser; the examination and debate reached its climax when Scrimgeour, charged, among other things, with circulating tracts which questioned the King's supremacy in the Church, maintained his view that the Church should not be subject to an earthly sovereign. Spottiswoode then said to him, or at least so Calderwood has reported, "I tell you, Mr. Johne, the king is Pope now, and so sall be". Scrimgeour replied, "It is an evill (title?) ye give him". To which Spottiswoode retorted, "This cannot stay the sentence".¹

In 1627 a directive from the King required defendants to take the oath.² This was the procedure in the English courts and its enforcement was a part of the procedure which the critics of the courts particularly disliked. If the puritan defendant took the oath and told the truth, thus acknowledging his guilt, that was all the evidence the court needed; no further corroboratory evidence was necessary in the commissions' procedure as in common-law procedure. If the puritan defendant could avoid the oath and avoid testifying it was possible that he could, by delaying proceedings, avoid conviction. The puritans generally refused to give the oath; and it is very likely that the Scottish bishops generally did not insist upon it in the Scottish Courts.³ The Presbyterian ministers in many cases denied that the Court had any legal jurisdiction over them and denied the King's supremacy in ecclesiastical matters—as Scrimgeour had. For the most part the members of the Commission made considerable attempts to persuade the ministers to accept the jurisdiction of the Court and to refrain at least from openly attacking the episcopal establishment before they considered suspending, warding, or depriving ministers.

The Courts were bitterly criticised by the presbyterians, both by the

¹ Cald. VII, 414-424.

² *R.P.C.*, 2nd Series, I, 545-547.

³ In 1619 Scott and Carmichael refused to take an oath, but were allowed to make their defence; Cald. VII, 392. See also VII, 201.

ministers and their supporters among the laity. Johnson of Wariston—the later Clerk of the General Assembly of 1638—was the author of a tract written in 1634 attacking the Court as a body not sanctioned by a free General Assembly and having judicial powers which infringed upon those of the existing law courts.¹ No such figure as Lord Chief Justice Coke arose to make such a determined attack upon the High Commission's powers as that critic had done in England. But it is evident that there was jealousy of the powers the King had granted to the High Commission among many members of both the Privy Council and the Lords of the Session. Clearly the lines of jurisdiction were not sufficiently demarcated; many cases which might have come before the High Commission were in fact considered by the Privy Council, and the Privy Council in many instances was called upon to consider whether or not to enforce decisions of the High Commission.

Edinburgh, during the reigns of James and Charles, was a city in which both Royalist opinion, which accepted episcopacy, and presbyterian opinion were well represented. A considerable group of elders of the High Kirk and other prominent citizens began to give increasingly vocal expression to their opposition to the liturgical Five Articles in 1619 and 1620. It is possible that some of them were cited to appear before the High Commission, but certainly in 1620 six were cited by the King to be warded by the Privy Council for 'seditious' behaviour, and seven appeared before the Council in 1624, three being warded out of the city.² Spottiswoode, in both 1620 and 1624, interceded to mitigate some of the harshness of the sentences the King had demanded. The Privy Council was also the body which considered the case in 1615 of the Jesuit Ogilvy who was ordered to stand trial before a specially constituted tribunal. Ogilvy was the only non-conformist to the established Church in the early seventeenth century to suffer the extreme penalty.

The Privy Council was certainly the body which could most effectively enforce its decisions. It also assisted the High Commission on occasion to make its judgements effective, as in 1628 it ordered the Gordons to obey the High Commission's mandate and in 1635 the High Commission requested the Privy Council to enforce its decision in the burial dispute at Cartsburn.³

However, while there were instances of co-operation between the two bodies, there were other occasions when it became clear that many on the

¹ Laing MS, I, 291, Univ. of Edin.

² *R.P.C.*, XII, 250, 309; XIII, 490-492, 503-504, 521-525.

³ See above, p. 203, note 1; p. 204, note 5.

Council disliked the prerogative Court and made numerous attempts to check its authority. Spottiswoode, writing to the Earl of Annandale in 1624, referred to the dislike of the lay lords on the Council and the Session for the Commission and the attempts made by the Council and the Session to review decisions of the High Commission.¹ In 1635 the Council refused to permit an appeal to the High Commission by Alexander McKie, Burgess of Wigtown, accused and convicted of slander against the Earl of Galloway.² In 1673 the Council investigated a complaint that the Bishop of Galloway was acting arbitrarily in summoning non-conformists before him.³

The opposition of the nobility and the gentry to the Court was certainly the result of many reasons other than their attitude toward church discipline. Many looked with little favour upon the increasingly important roles in government churchmen were attaining—on committees of the Privy Council, as members of the Court of Session, and on new commissions such as the Commission of Grievances and the Exchequer Commission in Charles' reign. The selection of Archbishop Spottiswoode as Chancellor in 1635 was an annoyance to many. Many of the nobility who held former church lands were still shaken by Charles' Revocation Act of 1626 (the year the details of the edict became known) and suspected that if the Church should increase its position in the country further the question of the alienated lands might again be reopened. While some of the bishops were allied to the families of prominent land-holders, more of the bishops came from families of the lesser gentry and the merchant class. There was not a great identity of interest between the bishops and the magnates.

In the final few years of the episcopal establishment there were rumours of a still more powerful ecclesiastical commission to be created, possibly as a result of Archbishop Laud's increasingly powerful role as overseer of church affairs in Scotland—chiefly through the newer bishops such as Maxwell of Ross, Wedderburn of Dunblane, Sydserf of Galloway, and Whitford of Brechin. The rumours of the new commission might well have been only rumours. The Earl of Traquair was, however, aware of them; and there is a letter from James Rae to Sir Colin Campbell of Glenurchy, Lorne's cousin, referring to a "great commission to come".⁴

The Court of High Commission was attacked by the covenanters in

¹ *Orig. Lett.*, 769-770.

² *R.P.C.*, 2nd Series, V, 491-492.

³ *R.P.C.*, 2nd Series, VI, 507.

⁴ Traquair House, letter Traquair to Sir Alexander Gibson, 12th April 1637; Breadalbane MS. 556, 17th Nov. 1634, James Rae to Colin Campbell.

the winter of 1637-1638 as one of the chief grievances upon the nation,¹ along with the Service Book introduced in 1637, the Canons published in 1636, the Articles of Perth, and that which was the most intensely disliked instrument of the royal ecclesiastical policy, episcopacy. All these institutions died together following the triumph of the covenanters in the General Assembly of 1638.

¹ Baillie, I, 42-49; App. 455-458.

It is significant that the Parliament of 1639, while ratifying the work of the General Assembly of 1638 (which included overturning the Court of the High Commission along with Episcopacy, the Articles of Perth, the Service Book and the Canons—*Acts of the General Assembly*, Edinburgh, 1843, ii, 8-21), voided the sentences of the courts given to ministers for doctrinal and disciplinary causes, but allowed the other actions of the courts to stand. "The article presented by the Commissioners of the kirk craving sentences given by the high Commissione against ministers to be reduced and declared null / Red voided and past in articles / for these sentences gevin against ministers for the particulars of doctrine and discipline now condemned in this church by the lait assemblie and ratified in this parliament: and no farder." *A.P.S.*, v, 259.
